

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA

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|-----------------------------------|---|---------------------------------|
| Darnell Brown, |) | Civil Action No.: 8:13-1499-BHH |
| |) | |
| Plaintiff, |) | |
| |) | ORDER AND OPINION |
| vs. |) | |
| |) | |
| Cpl. Barry Robinson, Nurse Denise |) | |
| Argentino, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

The plaintiff, Darnell Brown (“the plaintiff”), an inmate with the South Carolina Department of Corrections, proceeding *pro se*, initiated this action pursuant to 42 U.S.C. § 1983 against the remaining defendants, Cpl. Barry Robinson and Nurse Denise Argentino (“the defendants”), alleging violations of his constitutional rights. (ECF No. 1.) In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., the action was referred to United States Magistrate Judge Jacquelyn D. Austin for pretrial handling and a Report and Recommendation (“Report”). Judge Austin recommends that the plaintiff’s motion for summary judgment (ECF No. 39) and motion for default judgment (ECF No. 42) be denied, the defendant Argentino’s motion to dismiss (ECF No. 46) be denied, the defendant Robinson’s motion for summary judgment (ECF No. 55) be granted, and the defendant Robinson’s motion to dismiss for lack of prosecution (ECF No. 75) be mooted. (ECF No. 113.) The Report sets forth in detail the relevant facts and standards of law on this matter and the court incorporates them without recitation.

BACKGROUND

The plaintiff filed this action against the defendants alleging constitutional violations for failure to protect and deliberate indifference to serious medical needs. On June 27, 2014, the Magistrate Judge issued a Report (ECF No. 113). The defendant Argentino filed

her objections on July 11, 2014. Neither the plaintiff nor the defendant Robinson filed any objections. The Court has considered the defendant Argentino's objections, but finds them to be without merit. Therefore, it will enter judgment accordingly.

STANDARD OF REVIEW

The Magistrate Judge makes only a recommendation to the court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261, 270–71, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter with instructions. 28 U.S.C. § 636(b)(1). However, the court need not conduct a *de novo* review when a party makes only “general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir.1982). In the absence of a timely filed, specific objection, the Magistrate Judge's conclusions are reviewed only for clear error. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir.2005).

DISCUSSION

As already noted the plaintiff failed to file any objections to the Report. Thus, finding no clear error, the court will deny plaintiff's motion for summary judgment and motion for default judgment and will grant the defendant Robinson's motion for summary judgment. Further, in that the defendant Robinson failed to file any objections to the Magistrate Judge's Report, and the court finding no clear error, the court will dismiss the defendant Robinson's motion to dismiss for lack of prosecution as moot.

In the defendant Argentino's objections, she generally makes the same arguments that the Magistrate Judge has already considered and rejected. Because the court agrees with the Magistrate Judge's treatment of these issues, it need not discuss them for a second time here. Therefore, the court will overrule the defendant Argentino's objections.

CONCLUSION

After a thorough review of the Report and Recommendation and the record in this case, the Court agrees with the Magistrate Judge's conclusions in this case. Accordingly, the Report and is adopted and incorporated herein by reference.

As such, the plaintiff's motion for summary judgment (ECF No. 39) and motion for default judgment (ECF No. 42) are **DENIED**, the defendant Argentino's motion to dismiss (ECF No. 46) is **DENIED**, the defendant Robinson's motion for summary judgment (ECF No. 55) is **GRANTED**, and the defendant Robinson's motion to dismiss for lack of prosecution (ECF No. 75) is dismissed as **MOOT**.

The court will leave it to the sound discretion of the Magistrate Judge to set a scheduling order in this case.

IT IS SO ORDERED.

/s/Bruce Howe Hendricks
United States District Judge

March 30, 2015
Greenville, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified that any right to appeal this Order is governed by Rules 3 and 4 of the Federal Rules of Appellate Procedure.